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TAGS: CH KTIA MOPS PBTS PHSA PREL

SUBJECT: USN ACTIVITIES IN CHINA'S EXCLUSIVE ECONOMIC ZONE  
(EEZ)

REF: A. REF: 07 STATE 187212

- 1B. 07 STATE 100698
- 1C. 07 STATE 002129
- 1D. 07 BEIJING 0427
- 1E. 07 STATE 2921
- 1F. 06 BEIJING 20020
- 1G. 02 BEIJING 9353
- 1H. 01 STATE 96522

Classified By: PDAS Glyn T. Davies for reasons 1.4(b) and (d)

11. (U) This is an action request. Please see paragraph eight.

12. (U) Background: China objects to military surveys in its EEZ, and has on occasion challenged or interfered with U.S. Navy ships conducting military surveys within China's claimed EEZ. The U.S. has on several occasions objected to China's actions, Refs A and B.

13. (U) Under customary international law, military surveys may be conducted within an EEZ as an exercise of high seas freedoms and related internationally lawful uses of the sea as recognized in Articles 56, 58, and 87 of the United Nations Convention on the Law of the Sea (LOS). There is no requirement to provide advance notification to or receive permission from a coastal state. Under the Law of the Sea, a coastal state is obligated to have due regard for the exercise of high seas freedoms and related internationally lawful uses of the seas by other states in its EEZ. In addition, U.S. warships or naval auxiliaries are entitled to complete sovereign immunity while exercising high seas freedoms under the LOS. (Reftels).

14. (S) A U.S. naval auxiliary ship, the USNS Victorious, was conducting military survey activities within China's EEZ. Since March 5, 2008, People's Liberation Army Navy (PLAN) Luhu- or Luda-class surface combatants and Wagon oceanographic and patrol vessels have shadowed the USNS Victorious, while Y-12 and B-6 aircraft have conducted 75 low-altitude passes over the U.S. vessel.

15. (S) On March 8, 2008, Luhu-class DD112 shined a high-intensity, narrow-beam white light at USNS Victorious for approximately 30 minutes. The light was of such intensity that it temporarily impaired the visual acumen of USNS Victorious personnel and thereby constituted a hazard to navigation. Eight B-6 aircraft flew near or

over USNS Victorious during a four-hour period that partially overlapped the intense illumination of the Victorious by the Luhu-class DD112. USPACOM JIOC later assessed these flights to be training flights and not a reaction to USNS Victorious operations. However, the JIOC could not completely rule out that the Chinese military used USNS Victorious as a training opportunity as the B-6 aircraft transited the area.

¶ 16. (S) The U.S. government objects to China's conduct as described above, which is provocative and inconsistent with China's legal obligations under the law of the sea. China's activities regarding USNS Victorious constitute serious harassment and elevate the risk of miscalculation.

¶ 17. (S) The U.S. government also wishes to reiterate that the PRC's 2002 surveying and mapping law, insofar as it is applied to foreign military vessels engaged in military activities conducted outside PRC territorial seas, is inconsistent with international law.

¶ 18. (S) Action Request: Post is requested to present the talking points in paragraph 9 to appropriate counterparts in the Ministry of Foreign Affairs (MFA). Talking points may also be left as a non-paper.

¶ 19. (S/REL CHINA) Begin talking points:

-- I would like to express serious concerns over several recent incidents involving a U.S. military survey ship operating in the East China Sea.

-- Over the past few weeks, the USNS Victorious, a naval auxiliary ship enjoying complete sovereign immunity, has engaged in lawful military activities in China's claimed EEZ.

-- Those lawful military activities include collecting marine data at various locations in the Asia-Pacific region for military purposes. These activities are in full compliance with customary international law as recognized in the 1982 UN Convention on the Law of the Sea.

-- The activities of Chinese maritime and air assets, including excessive low-altitude aircraft passes by PLAAF bomber aircraft and the shining of a narrow, high-intensity beam of light by a PLAN vessel, are provocative and potentially dangerous. Such actions are inconsistent with the maritime cooperation our two nations have been working to establish over the past few years. Continued harassment of U.S. vessels conducting lawful activities in China's EEZ may damage recent advances in U.S.-China cooperation and could result in miscalculation.

-- Irrespective of our positions on the law of the sea, the United States expects Chinese military air and naval assets to refrain from provocative and dangerous actions that could lead to miscalculation.

¶ 110. (U) If Chinese officials contest the legality of military activities in the EEZ, then present the following talking points:

-- The United States wishes to remind the government of China that under customary international law as recognized in the LOS Convention all states enjoy the right to engage in military activities in waters beyond the territorial sea of another state without prior notification to, or consent of, the coastal state. Accordingly, the United States may conduct military surveys and other military

activities in China's EEZ without a requirement to provide prior notice to, or to gain permission from, China.

-- Coastal states do not have a right under international law to regulate military activities, including military surveys, in the EEZ.

-- The United States is familiar with China's 2002 mapping and survey law, which provides that foreign entities engaged in mapping and survey activities in "waters under Chinese jurisdiction" are to have the prior consent of both PRC civilian government authorities and the military. Insofar as it purports to apply to foreign military vessels engaged in military activities in the EEZ, including military surveys and hydrographic surveys, a requirement for prior permission from PRC authorities is contrary to customary international law as recognized in the Law of the Sea Convention.

-- Under customary international law as recognized in articles 58(1) and 87 of the Law of the Sea Convention, all states may conduct military activities, including military surveys, in a coastal state's EEZ.

-- In accordance with international law, the United States reserves the right to engage in military surveys anywhere in the world outside properly and lawfully delimited territorial seas, international straits, and archipelagic waters without providing advance notification to, or receiving permission from, interested coastal states. The United States calls on China to fulfill its obligation to respect the freedoms and rights guaranteed to all states under international law for uses of the sea and airspace.

¶11. (U) If Chinese officials respond by arguing that surveys conducted by foreign military vessels in China's EEZ are marine scientific research (MSR) under part xiii of the LOS convention and, as such, require advance notification to and consent from the coastal state, then present the following talking point in response:

-- The United States recognizes that a coastal state may regulate and require prior authorization for the conduct of marine scientific research in the coastal state's EEZ. However, customary international law as recognized in articles 19(2)(j), 21(1)(g), 40, 54, and 246(1) of the Law of the Sea Convention distinguishes between marine scientific research and survey activities, and it is the longstanding position of the United States and many other states that military surveys are distinct from marine scientific research and not subject to coastal state regulation or interference.

End talking points.

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